

**Proposed Substitute  
Bill No. 5561**

LCO No. 3200

**AN ACT CONCERNING FAIRNESS IN CONSUMER CONTRACTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective July 1, 2016*) For the purposes of this  
2       section and sections 2 and 3 of this act:

3       (1) "Consumer contract" means a contract prepared by or on behalf  
4       of a business or commercial party for use in such party's routine  
5       business or commercial transactions with consumers;

6       (2) "Consumer" means an individual who uses, purchases, acquires,  
7       attempts to purchase or acquire or receives an offer for any real  
8       property, tangible or intangible goods, services or credit for personal,  
9       family or household purposes; and

10      (3) "Business or commercial party" means the party on behalf of  
11      which a standard form contract is prepared.

12      Sec. 2. (NEW) (*Effective July 1, 2016*) (a) The following contractual  
13      terms shall be deemed substantively unconscionable when included in  
14      a consumer contract that was not drafted by the consumer:

15      (1) A requirement that resolution of legal claims take place in an  
16      inconvenient venue;

17       (2) A waiver of the consumer's substantive rights to assert claims or  
18 seek remedies provided by state or federal law;

19       (3) A waiver of the consumer's right to seek punitive, minimum,  
20 multiple or other statutory damages as provided by law or attorney's  
21 fees if authorized by statute or common law;

22       (4) A requirement that any action brought by the consumer with  
23 regard to the contract be initiated within a time period that is shorter  
24 than the applicable statute of limitations;

25       (5) A requirement that the consumer pay fees and costs to bring a  
26 legal claim that substantially exceeds the fees and costs that would be  
27 required to bring a claim in a state court or that makes no provision for  
28 the waiver of fees and costs for a consumer who cannot afford such  
29 fees and costs; and

30       (6) A failure to permit a party to present evidence in person or to  
31 ensure that the consumer can obtain, prior to a hearing, any  
32 information that is material to the issue to be determined at such  
33 hearing.

34       (b) In determining whether the terms described in subsection (a) of  
35 this section are unenforceable, a court shall consider the principles that  
36 normally guide courts in the state in determining whether  
37 unconscionable terms are enforceable. The common law and the  
38 Uniform Commercial Code shall also guide the court in determining  
39 the enforceability of unfair terms not specifically identified in  
40 subsection (a) of this section.

41       (c) In determining whether the rebuttable presumption that a term  
42 in a consumer contract found to be unconscionable is unseverable from  
43 the provision in which it is situated has been rebutted, the court may  
44 consider the general principles of contract law regarding the  
45 severability of unenforceable terms.

46       (d) It shall be an unfair and deceptive practice in violation of the  
47 Connecticut Unfair Trade Practices Act, sections 42-110a to 42-110q,

48 inclusive, of the general statutes, to include any of the presumptively  
49 unconscionable terms identified in subsection (a) of this section in a  
50 consumer contract that was drafted by a party other than the  
51 consumer. A party who prevails on a claim under this section shall be  
52 entitled to all damages and remedies available pursuant to the  
53 Connecticut Unfair Trade Practices Act.

54       Sec. 3. (NEW) (*Effective July 1, 2016*) (a) A person harmed by a  
55 violation of the Connecticut Unfair Trade Practices Act may initiate on  
56 behalf of the state an action to recover civil penalties on behalf of the  
57 state and to seek injunctive, declaratory or other equitable relief that  
58 the state would itself be entitled to seek.

59       (b) In initiating an action under this section, a person may allege  
60 multiple violations that have affected different consumers, provided  
61 those violations are of a sufficiently similar kind that may be efficiently  
62 managed in a single action.

63       (c) A court may award a person who initiates a claim under this  
64 section an incentive award of up to twenty-five per cent of the total  
65 monetary recovery if such person pursues the action to final judgment  
66 or settlement as the prevailing party, or up to ten per cent of the total  
67 monetary recovery if the state intervenes in the action and pursues  
68 such action to final judgment as the prevailing party, including after  
69 settlement of the action in accordance with subdivision (4) of this  
70 section.

71       (1) A person initiating an action under this section shall serve a copy  
72 of the complaint and a letter describing the action on the Attorney  
73 General, at which point the action shall be stayed for thirty days. The  
74 state may intervene in the action and proceed with any and all claims  
75 in the action: (A) As of right within the thirty-day stay; or (B) for good  
76 cause, as determined by the court, after the expiration of the thirty-day  
77 stay.

78       (2) Whether or not the state proceeds with the action, upon a  
79 showing by the state that certain actions of discovery by the person

80 initiating the action would interfere with the state's investigation or  
81 prosecution of a criminal or civil matter arising out of the same facts,  
82 the court may stay such discovery for a period of not more than sixty  
83 days. Such a showing shall as necessary be conducted in camera. The  
84 court may extend the sixty-day period upon a further showing in  
85 camera that the state has pursued the criminal or civil investigation or  
86 proceedings with reasonable diligence and any proposed discovery in  
87 the action will interfere with the ongoing criminal or civil investigation  
88 or proceedings.

89 (3) No action may be brought by a private party acting pursuant to  
90 this section for any violations previously alleged as the basis for an  
91 action brought by the state or by another private party pursuant to this  
92 section, and no action may be brought by the state for any violations  
93 previously alleged as the basis for an action brought by a private party  
94 pursuant to this section. Furthermore, when a person initiates an  
95 action under this section, no person other than the state may intervene  
96 or bring a related action under this section based on the facts  
97 underlying the pending action.

98 (4) The court in which the action is filed shall review and approve  
99 any proposed settlement of an action brought under this section to  
100 ensure that the settlement provisions are reasonable in light of state  
101 law. The court shall also ensure that any incentive fees and attorney  
102 fees or costs included in a settlement are reasonable and that the  
103 person initiating an action under this section does not recover, as an  
104 incentive payment, more than twenty-five per cent of the recovery  
105 remitted to the state under the proposed settlement. The proposed  
106 settlement shall be submitted to the Attorney General at the same time  
107 that it is submitted to the court. If the Attorney General opposes the  
108 settlement and expresses such opposition by filing a motion with the  
109 court, the court must decline approval of the settlement.

110 (5) The state may dismiss any action in which it decides to intervene  
111 under subdivision (1) of this section notwithstanding the objections of  
112 the person who initiated the action.

113 (6) The state may settle any action in which it decides to intervene  
114 under subdivision (1) of this section notwithstanding the objections of  
115 the person who initiated the action.

116 (7) An action initiated by a private person under this section shall  
117 not bar such person or any other individual from filing a private action  
118 based on the same nucleus of operative facts, nor shall a prior private  
119 action based on the same nucleus of operative facts bar an action under  
120 this section.

121 (8) Actions under this section are prosecuted on behalf of the state,  
122 not on behalf of an individual, and mandatory arbitration agreements  
123 between private parties do not apply to actions under this section. No  
124 contract shall waive or limit a private party's right to bring suit under  
125 this section by waiving such party's right to bring such an action in a  
126 public forum or by preventing such party from being able to bring an  
127 action alleging multiple violations committed against multiple  
128 consumers pursuant to subsection (b) of this section.

129 (9) If any provision of this section or the application thereof to any  
130 person or circumstance is held invalid, such invalidity shall not affect  
131 other provisions or applications of this section that may be given effect  
132 without such invalid provision or application, and, to this end, the  
133 provisions of this section are declared to be severable.

134 (1) Unless state law provides a greater amount as the civil penalty  
135 recoverable by the state for violations of the Connecticut Unfair Trade  
136 Practices Act, a person who commits a violation of such act shall be  
137 subject to a civil penalty not to exceed five thousand dollars per  
138 violation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2016	New section
Sec. 2	July 1, 2016	New section
Sec. 3	July 1, 2016	New section

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